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*Office of Campaign and Political Finance
One Ashburton Place, Room 411
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Advisory Opinion

April 22, 2002
AO-02-16

Rebecca Stewart, Treasurer
Aleo Committee
7 Hampden Street
Northampton, MA 01060

Re: Clean Elections Law – Election cycle for candidate in November 5, 2002 General Election
who also sought election in April 9, 2002 Special Election

Dear Ms. Stewart:

This letter is in response to your request for an opinion regarding the Clean Elections Law, M.G.L. c. 55A.

You have stated that Michael Aleo was a candidate in the special election that was held for the vacant First Hampshire District state representative seat on April 9, 2002.

Although not successful in the special election, Mr. Aleo anticipates being a candidate for the seat in the November 5, 2002 general election. He is interested in participating in the Clean Elections program in that election, and your questions relate to the determination of the candidate's election cycle in connection with his candidacy in the November 5, 2002 election.

QUESTION: When would the election cycle for the regular state election in 2002 start?

ANSWER: The election cycle would begin on April 28, 2002.

QUESTION: Will individuals who have contributed in connection with the special election campaign be able to contribute an additional \$100 in connection with the regular state election campaign?

ANSWER: Yes. A person may make a contribution before April 28 to promote Mr. Aleo's special election candidacy and an additional contribution during the election cycle that begins on April 28 to support Mr. Aleo's regular state election candidacy, if receipt of the additional contribution is

consistent with the requirements of the campaign finance law, M.G.L. c. 55, e.g., the total amount contributed must not exceed \$500 during a calendar year.

DISCUSSION

A candidate who wishes to participate in the Clean Elections program must file a Declaration of Intent reflecting the candidate's agreement to accept only "allowable contributions" and clean election funds during an election cycle. See M.G.L. c. 55A, § 1, which also defines "allowable contributions" as contributions from individuals and political committees that do not exceed \$100 in the aggregate during an election cycle. For purposes of complying with this provision, it is obviously necessary to define the "election cycle" for any particular candidate.

The term "election cycle" is defined in Section 1 of the Clean Elections Law as "the period beginning on the thirty-first day following a regular state election for that office and ending on the thirtieth day following the next state election¹ for that office, inclusive." For the election cycle that ends on the thirtieth day following the state election in 2002 the election cycle began on March 31, 2001. See Section 325, Chapter 159 of the Acts of 2000. Therefore, candidates seeking legislative seats through the regular state election in November 2002 have an election cycle, defined in the statute, which begins on March 31, 2001 and ends on December 5, 2002. Candidates who sought election to the legislature in a special election before November 2002 could not, in connection with the special election, participate in the Clean Elections program. See AO-02-08.²

There are no provisions in the Clean Elections Law defining a shorter election cycle in the regular biennial state election in November 2002 for candidates previously on the ballot in special elections held during the 2001-2002 election cycle who will also be on the ballot in the state election in November 2002. The office has, however, issued regulations to further define the election cycle in such a situation.

Specifically, 970 CMR 5.04(2)(d) states:

The election cycle for a candidate for a state office who was most recently a candidate on the ballot in a legislative special election during the election cycle provided for in 970 CMR 5.04(1) shall begin on the 31st day following said special election. Such candidate's election cycle shall end on the 30th day following the next election. For example, the election cycle for a candidate for state senator in November 2002 who was a candidate for state representative in a special election held on April 3, 2001 begins on May 4, 2001 and end on December 5, 2002.

Application of this regulation would result in Mr. Aleo's election cycle beginning 31 days after the April 9, 2002 special election (May 10, 2002).

¹ "State election" is defined as "any election at which a national, state, or county officer or a regional district school committee member elected district-wide is to be chosen by the voters, whether for a full term or for the filling of a vacancy." See M.G.L. c. 50, § 1.

² As noted in that opinion, "the absence of any provision [in the Clean Elections law] addressing special elections before the end of the first election cycle expressly addressed by the statute indicates that persons running in special elections held before December 5, 2002 should not be the first candidates to participate in the system."

As suggested, however, by the example provided in the regulation, the office did not originally contemplate that special elections would be called during the last nine months of the biennial election cycle. Adherence to the regulation, as drafted, would result in a very short election cycle for candidates having an election cycle beginning after a special election held in April 2002.³ To qualify for participation in the Clean Elections program a candidate for state representative would need to receive at least 200 qualifying contributions⁴ and apply for certification between the beginning of the abbreviated election cycle and the end of the qualifying period. See M.G.L. c. 55A, §§ 4 and 5. The qualifying period for candidates for state representative ends on May 28, 2002. To become a certified candidate, qualifying contribution forms and lists must first be submitted to the local Boards of Registrars at least one week before the end of the qualifying period, i.e., no later than May 21. See 970 CMR 5.12(1).

A strict reading of 970 CMR 5.04(2)(d) would impose a severe burden on candidates who were on the ballot in the April 9, 2002 special election who also wish to participate in the Clean Elections program in the November 2002 election. Such candidates would need to collect the requisite number of qualifying contributions between May 10 and May 21.

We believe it is more reasonable to provide an exemption to the regulation for all candidates in special elections in April 2002, specifying that the election cycle and qualifying period for such candidates begins 31 days before May 28, 2002, the last day such candidates may file nomination papers with the state secretary. This results in an election cycle and qualifying period that lasts from April 28 to May 28, providing sufficient time for a candidate to comply with the Clean Elections law and become a certified candidate. As noted above, the qualifying contribution forms and lists must be submitted to the Registrars no later than May 21.

In response to your second question, an individual who has contributed to the candidate during the special election campaign may also contribute up to \$100 during the election cycle beginning on April 28. An “allowable contribution” is a monetary contribution made *during an election cycle*, which cannot exceed \$100 during the election cycle. See M.G.L. c. 55A, § 1. A contribution received after the beginning of the election cycle is not added to contributions received prior to the beginning of the current election cycle for purposes of determining compliance with the \$100 limit. The receipt of such allowable contributions, however, must also be consistent with the limits of the campaign finance law, M.G.L. c. 55. The contribution received during the election cycle could not, when added to a contribution previously received in 2002, exceed the limits of the campaign finance law. For example, if a contributor provided \$425 in aggregate contributions (monetary or in-kind) in connection with the special election, the contributor could not also contribute \$100 after the election cycle begins on April 28, 2002 because such contribution would exceed the \$500 limit stated in Section 7A of Chapter 55.

³ In addition, candidates for special elections held later than April 9, 2002 would be even more adversely impacted by the regulation, and therefore the exemption provided by this opinion is necessary not only to address your concerns, but also to address the concerns of candidates in other special elections, e.g., candidates for Senate in the April 23 special election in the First Essex District.

⁴ Qualifying contributions are “allowable” contributions of at least five dollars solicited and received during the qualifying period and after the filing of a Declaration of Intent, which are accompanied by a signed form in which the contributor states that he wishes the participant to be eligible to receive clean election funds. See M.G.L. c. 55A, § 1.

This opinion is issued within the context of the campaign finance law and the Clean Elections Law and is provided solely on the basis of representations in your letter and conversations with OCPF staff. Please contact us if you have further questions.

Sincerely,

A handwritten signature in cursive script, reading "Michael J. Sullivan", followed by a vertical line.

Michael J. Sullivan
Director

MJS:gb